



UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

Issued by the Department of Transportation on **March 15, 2001**

**NOTICE OF ACTION TAKEN -- DOCKET OST 99-5415**

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This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Application of **EMERY WORLDWIDE AIRLINES, INC.,** filed **3/1/01,**  
and supplemented on **3/12/01,** for:

**XX** Renewal for two years of exemption under 49 U.S.C. §40109 to provide the following service:

**Scheduled foreign air transportation of property and mail between the terminal point Dayton, Ohio, and the terminal point Monterrey, Mexico, and to combine this authority with Emery's certificate authority to serve Laredo-Monterrey and Dayton-Mexico City. Emery proposes to serve the market using B-727 aircraft operated by Ryan International Airlines.<sup>1</sup>**

**XX** Waiver of 14 CFR 377.10 (c)(1)<sup>2</sup>

Applicant rep: **Lorraine B. Halloway (202) 624-2500** DOT Analyst: **Linda Lundell (202) 366-2336**

**DISPOSITION**

**XX** **Granted (see remarks)**

The above action was effective when taken: **March 15, 2001,** through **March 15, 2003,** or until 90 days after final Department action on Emery's certificate application, in Docket OST-2000-7525, whichever occurs earlier.

**Action taken by:            Paul L. Gretch**  
**Office of International Aviation**

**XX** **The authority granted is consistent with the aviation agreement between the United States and Mexico.**

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated:

**XX** **Holder's certificates of public convenience and necessity**

**XX** **Standard Exemption Conditions (attached)**

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**Remarks:** The U.S.-Mexico authority granted is subject to the dormancy notice requirements set forth in condition 7 of Appendix A of Order 88-10-2. Consistent with our standard practice, the dormancy notice period will begin on April 24, 2001, Emery's proposed startup date for the subject U.S.-Mexico authority.

We acted on this application without awaiting expiration of the 15-day answer period with the consent of all parties served with the application.

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<sup>1</sup> Emery states that its Dayton-Monterrey route has been dormant for more than 90 days, but that it plans to resume service in the market on April 24, 2001. Under these circumstances, Emery requests that the Department waive the requirement to file such notice at this time.

<sup>2</sup> Emery requests a waiver from the 60-day advance filing requirements of 14 CFR 377 to ensure that its authority would continue beyond the expiration date (March 31, 2001), pending action on its renewal application.

The route integration authority granted is subject to the condition that any service provided under this exemption shall be consistent with all applicable agreements between the United States and the foreign countries involved. Furthermore, (a) nothing in the award of the route integration authority requested should be construed as conferring upon Emery rights (including fifth-freedom intermediate and/or beyond rights), to serve markets where U.S. carrier entry is limited unless Emery notifies the Department of its intent to serve such a market and unless and until the Department has completed any necessary carrier selection procedures to determine which carrier(s) should be authorized to exercise such rights; and (b) should there be a request by any carrier to use the limited-entry route rights that are included in Emery's authority by virtue of the route integration exemption granted here, but that are not then being used by Emery, the holding of such authority by route integration will not be considered as providing any preference for Emery in a comparative carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.

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On the basis of data officially noticeable under Rule 24(g) of the Department's regulations, we found the applicant qualified to provide the services authorized.

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) our action was consistent with Department policy; (2) grant of the application was consistent with the public interest; and (3) grant of the authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. To the extent not granted, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR §385.30, may file their petitions within ten (10) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

An electronic version of this document is available on the World Wide Web at:  
*[http://dms.dot.gov/reports\\_aviation.asp](http://dms.dot.gov/reports_aviation.asp)*

## APPENDIX A

### **U.S. CARRIER** **Standard Exemption Conditions**

In the conduct of operations authorized by the attached notice, the applicant(s) shall:

- (1) Hold at all times effective operating authority from the government of each country served;
- (2) Comply with applicable requirements concerning oversales contained in 14 CFR 250 (for scheduled operations, if authorized);
- (3) Comply with the requirements for reporting data contained in 14 CFR 241;
- (4) Comply with requirements for minimum insurance coverage, and for certifying that coverage to the Department, contained in 14 CFR 205;
- (5) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (6) Comply with the applicable requirements of the Federal Aviation Administration Regulations, including all FAA requirements concerning security; and
- (7) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department of Transportation, with all applicable orders and regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

The authority granted shall be effective only during the period when the holder is in compliance with the conditions imposed above.